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Adelanto, CA Code of Ordinances

## Chapter 3.60 CANNABIS EXCISE TAX

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### 3.60.010 Purpose.

This Chapter is enacted solely to raise revenue for municipal purposes, and is not intended for regulation of cannabis activities. The Cannabis Excise Tax required by this Chapter is imposed through the taxing power of the City after obtaining approval from City voters. Payment of the Cannabis Excise Tax or Voluntary Contribution delineated in this Chapter does not release or in any way excuse a person, entity, or business from the payment of any other applicable tax or from compliance with other applicable provisions of this Code or other laws, including any permit or other license requirement.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### 3.60.020 Definitions:

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning:

A. "Audit Costs" mean all the City's costs, expenses, and fees associated with an audit conducted pursuant to this Chapter and include, but are not limited to, investigation costs, audit expenses, internal staff costs, administrative overhead, third-party contractor costs and fees, and attorneys' fees.

B. "AUMA" means the Adult Use of Marijuana Act, which was approved by California voters as Proposition 64 on November 8, 2016.

C. "Business" means and includes professions, trades, occupations, and every other kind of calling carried on for profit or livelihood by any type of person or entity, whether or not a profit or livelihood is earned thereby.

D. "Cannabis" also means "marijuana" and shall be defined in accordance with the MCRSA, the AUMA, Business and Professions Code section 19300.5, Health and Safety Code section 11018, and other applicable State laws.

E. "Cannabis Business" means any person, entity, or business that engages in any type of Commercial Cannabis Activities.

F. "Cannabis Excise Tax" means a monthly excise tax, with no termination date, on each business engaged in any type of Commercial Cannabis Activities licensed or operating within the City based on the gross receipts attributable to that business's gross receipts earned from any type of Commercial Cannabis Activities within the City in the preceding calendar month.

G. "Cannabis Excise Tax Rate" means the Cannabis Excise Tax rate set by the City Council within the Council's voter approved authority. The maximum Cannabis Excise Tax Rate set by the electorate on November 8, 2016 is five percent.

H. "Cannabis Permit" means any type of approval from the City to engage in any type of Commercial Cannabis Activities, including, but not limited to, Cultivation Permits, Manufacturing Permits, Distribution Permits, Testing Permits, and Dispensary Permits.

I. "Cannabis Permittee" means an applicant who has applied for and has been issued any type of a Cannabis Permit by the City pursuant to the terms and conditions of this Code.

J. "City" means the City of Adelanto, California, a Charter Law City.

K. "City Hall" means the City Hall of the City of Adelanto, wherever it may be situated, which is currently located at 1600 Air Expressway, Adelanto, California 92301.

L. "City Manager" means the individual duly appointed by a majority of the City Council of the City to serve in the capacity as executive officer of the City on a permanent or interim basis.

M. "City Manager's Designee" means the City Manager or the individual designated by the City Manager to administer any portion of this Chapter.

N. "Commercial Cannabis Activities" includes any cannabis activities for which any sort of compensation is sought, including, but not limited to, the cultivation, manufacturing, distribution, transportation, testing, dispensing, delivery, sale, use, storage, marketing, processing, or packaging of cannabis or cannabis products.

O. "Cultivation Facility" refers to the cannabis cultivation facility of a Voluntary Contributor.

P. "Cultivation Permittee" means an applicant who has applied for and has been issued a Cultivation Permit by the City pursuant to the terms and conditions of this Code.

Q. "Engaged in business" means the commencing, conducting, operating, managing, or carrying on of any type of Cannabis Business, or the exercise of corporate or franchise powers, whether done as a proprietor or as an

officer, manager, employee, or agent of a Cannabis Business, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities.

R. "Fiscal Year" begins on the first day of July of each calendar year and ends on the last day of June of the following year.

S. "Gross Receipts" means the total value actually received or receivable (whether in the form of cash, credit, property, goods, or services) from sales or the performance of any act, service, or employment for which a charge is made or credit allowed. Gross receipts include, but are not limited to, all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the costs of the materials used, labor or service costs, interest paid or payable, losses, or other expenses whatsoever.

1. Excluded from "Gross Receipts" shall be: anything exempted by State law; cash discounts allowed and taken on sales; credit allowed on property sold; tax required by law to be included or added to the purchase price and collected from the consumer or purchaser; and such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.

T. "Income Statement" means an income statement prepared in accordance with generally accepted accounting principles and in conformance with any additional guidelines prepared by the City Manager's Designee that accurately reports the gross receipts from Commercial Cannabis Activities for a Cannabis Business for the preceding calendar month or fiscal year within 15 days of the conclusion of each calendar month or fiscal year.

U. "Late Penalty" means the charge for failure to pay any Cannabis Excise Tax owed to the City by its due date.

V. "MCRSA" means the California Medical Cannabis Regulation and Safety Act.

W. "Person" means and includes all domestic and foreign entities, corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, trusts, societies, and individuals transacting and carrying on any business in the City other than as an employee.

X. "Sale" means and includes any sale, exchange, or barter.

Y. "Square Footage Report" means a written report submitted to the City by a Cultivation Permittee wishing to participate in the Voluntary Contribution alternative, which details the square footage of the permittee's Cultivation Facility upon forms prescribed by the City Manager's Designee.

Z. "Tax Debt" means the full amount of all Cannabis Excise Taxes, penalties, and interest imposed by this Chapter due and owing to the City.

AA. "Underpayment Penalty" means the financial penalty owed for underpaying by a specified certain amount any Cannabis Excise Tax liability owed in any period.

BB. "Voluntary Contribution" refers to the voluntary contribution alternative described in this Chapter through which Voluntary Contributors may qualify for a zero percent Cannabis Excise Tax.

CC. "Voluntary Contributor" means any Cultivation Permittee who has been authorized by the City Manager's Designee to participate in the Voluntary Contribution alternative described in this Chapter.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### **3.60.030 Cannabis Business Operations Requirements.**

No person, entity, or business shall engage in any type of Commercial Cannabis Activities in the City without first applying for and receiving an annual Cannabis Permit from the City and paying the City's Cannabis Excise Tax or Voluntary Contribution pursuant to the provisions of this Chapter. Operation of a Cannabis Business in the City

without a Cannabis Permit or payment of the Cannabis Excise Tax or Voluntary Contribution shall constitute a separate violation for each day that such business is conducted. The Cannabis Excise Tax or Voluntary Contribution shall be in addition to any other fee or tax required under this Code or by any other law.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

#### **3.60.040 Cannabis Excise Tax Imposed.**

A. The Cannabis Excise Tax is a monthly excise tax on each business engaged in any type of Commercial Cannabis Activities licensed or operating within the City based on the gross receipts attributable to that business's gross receipts earned from Commercial Cannabis Activities within the City in the preceding calendar month.

B. The maximum Cannabis Excise Tax Rate approved by the City electorate on November 8, 2016 was five percent. The maximum Cannabis Excise Tax Rate of five percent is hereby imposed on all Commercial Cannabis Activities. The City Council may establish a different Cannabis Excise Tax Rate, or may establish differing Cannabis Excise Tax Rates for the different types of Commercial Cannabis Activities, in a separate Ordinance, subject to the maximum voter approved rate of five percent.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

#### **3.60.041 Voluntary Contribution Alternative.**

A. Notwithstanding any other provision of this Chapter, Cultivation Permittees may voluntarily elect to pay the Voluntary Contribution described in this Section to qualify for a zero percent Cannabis Excise Tax.

B. Any Cultivation Permittee wishing to participate in the Voluntary Contribution alternative must first obtain the written approval of the City Manager's Designee before commencing participation. To obtain said approval, each Cultivation Permittee must submit to the City a written report ("Square Footage Report") detailing the square footage of its respective Cultivation Facility, upon forms prescribed by the City Manager's Designee. Every Square Footage Report shall be signed by the Cultivation Permittee, and shall contain a statement made under penalty of perjury that all information provided therein is true and correct to the best of the Cultivation Permittee's knowledge.

C. Each Voluntary Contributor shall pay an annual Voluntary Contribution to the City in the amount of \$5 per square foot of the Voluntary Contributor's Cultivation Facility. Notwithstanding the preceding sentence, a Voluntary Contributor who commits in writing before July 1, 2017 to make its annual Voluntary Contribution payment to the City before January 1, 2018, and obtains written approval from the City Manager's Designee to participate in the Voluntary Contribution alternative, shall qualify for a \$4.25 per square foot Voluntary Contribution rate ("Reduced Rate").

1. Square footage for purposes of this Section shall be based on the entire blueprint area of the Cultivation Facility, and not just the cannabis canopy or operational area of the Cultivation Facility.

2. If a Voluntary Contributor stacks cannabis plants or equipment vertically on top of each other at its Cultivation Facility, then the square footage of that canopy or equipment area shall be multiplied by the number of stacks of plants or equipment when determining the total square footage of the Cultivation Facility and, thereby, the amount of Voluntary Contribution owed.

3. The City Manager's Designee shall have the power to enter and inspect any Voluntary Contributor's Cultivation Facility at any time, upon reasonable advance notice, to verify the square footage used to determine the amount of Voluntary Contribution owed. No Voluntary Contributor shall refuse or fail to allow the City Manager's Designee to inspect its Cultivation Facility, or shall refuse or fail to provide such additional information as requested by the City Manager's Designee.

D. Except for Voluntary Contributors qualifying for a Reduced Rate, each Voluntary Contributor shall pay the full amount of its annual Voluntary Contribution in advance within 30 days of receiving authorization from the City Manager's Designee to participate in the Voluntary Contribution alternative. Each year thereafter, each Voluntary Contributor shall pay the full amount of its annual Voluntary Contribution within 30 days of the anniversary of being authorized to participate in the Voluntary Contribution alternative.

[Ord. 569, Section 2, 5/24/17; Ord. 575, Section 2, 7/26/17 ]

### **3.60.050 Reporting.**

A. Unless specifically provided herein, this Section shall not apply to Voluntary Contributors.

B. Tax Period. Gross receipts for purposes of calculating the monthly Cannabis Excise Tax shall be determined based upon gross receipts for the calendar month preceding the Cannabis Excise Tax payment due date.

C. Monthly Income Statement. As set forth further in this Chapter, each Cannabis Business shall file at the service counter of City Hall a monthly Income Statement accurately reporting the gross receipts for that Cannabis Business for the preceding calendar month within 15 days of the conclusion of each calendar month.

D. Annual Income Statement. As set forth further in this Chapter, each Cannabis Business shall file at the service counter of City Hall an annual Income Statement accurately reporting the gross receipts for that Cannabis Business for the preceding fiscal year within 15 days of the conclusion of each fiscal year.

E. Business Cessation Reporting. Upon cessation of any Cannabis Business, that Cannabis Business shall inform the City Manager's Designee and shall provide a final accounting and Income Statement accurately reporting the gross receipts for that Cannabis Business for the preceding and current calendar month, as well as the current fiscal year, within 15 days of the cessation of the Cannabis Business. This Section shall also apply to Voluntary Contributors.

F. Financial Reporting. Upon request by the City Manager's Designee, all Cannabis Businesses shall provide all additional information required for the City to accurately track and tax all Commercial Cannabis Activities subject to the Cannabis Excise Tax. This Subsection shall also apply to Voluntary Contributors.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### **3.60.060 Tax Payment Due Date.**

Unless otherwise specifically provided, each Cannabis Excise Tax provided in this Chapter shall be due and payable within 15 days of the conclusion of each calendar month. The Cannabis Excise Tax shall be deemed delinquent if not paid on or before the due date specified in this Section.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### **3.60.070 Method of Payment.**

Cannabis Excise Taxes and Voluntary Contributions shall be paid at the designated service counter at City Hall in lawful money of the United States. Lawful money shall mean any currency, or negotiable instrument exchangeable for said currency, that the United States Congress has declared to be a national legal tender.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

**3.60.080 Monthly Income Statement.**

- A. Unless specifically provided herein, this Section shall not apply to Voluntary Contributors.
- B. Income Statement Filing. Along with payment of the Cannabis Excise Tax, each Cannabis Business shall file at the service counter of City Hall a monthly Income Statement accurately reporting the gross receipts for that Cannabis Business for the preceding calendar month within 15 days of the conclusion of each calendar month.
- C. Income Statement Contents. The Income Statement shall be a written statement in the form required by the City Manager's Designee and supported by such documentation and information as requested by the City Manager's Designee to properly determine the amount of Cannabis Excise Tax due, and to enable the City Manager's Designee to properly administer the provisions of this Chapter. Any Income Statement filed pursuant to this Chapter shall be signed by the Cannabis Permittee, and shall contain a statement made under penalty of perjury that all information provided in the Income Statement is true and correct to the best of the Cannabis Permittee's knowledge.
- D. Income Statement Not Conclusive. No Income Statement filed pursuant to this Chapter shall be conclusive as to the matters set forth therein, and acceptance of the Income Statement shall not prejudice the right of the City to recover any amount that may be ascertained to be due from any Cannabis Business in addition to the amount shown by such Income Statement should it be found to be incorrect.
- E. Accuracy of Income Statement Subject to Audit. The correctness of any Income Statement filed pursuant to this Chapter shall be subject to audit and verification by the City Manager's Designee, who is hereby authorized and empowered to inspect and audit the books and records of any Cannabis Business. No Cannabis Business or Cannabis Permittee shall refuse or fail to allow the City Manager's Designee to inspect and audit such books and records, or shall refuse or fail to provide such additional information as requested by the City Manager's Designee.
- F. Business Cessation. Income Statements and payments for all outstanding Cannabis Excise Taxes owed to the City are due to the City Manager's Designee within 15 days of cessation of any Cannabis Business.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

**3.60.090 Apportionment.**

Whenever any Cannabis Business engages in Commercial Cannabis Activities both within and outside the City, the Cannabis Excise Tax imposed by this Chapter shall be fairly apportioned to reflect that portion of Commercial Cannabis Activities conducted in, for, or related to the City. Apportionment guidelines to carry this purpose into effect may be prepared by the City Manager's Designee.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

**3.60.100 Renewals.**

It shall be the responsibility of each Cannabis Permittee to renew its Cannabis Permit annually and to pay the Cannabis Excise Tax or Voluntary Contribution for all periods business is conducted. No Cannabis Permit shall be renewed until the Cannabis Permittee has paid in full all delinquent Cannabis Excise Taxes or Voluntary Contributions, including accrued interest and applicable penalties, to the City Manager's Designee.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

**3.60.110 No Tax Refund.**

A. No refund shall be made of any Cannabis Excise Tax or Voluntary Contribution collected pursuant to this Chapter.

B. Overpayments of any Cannabis Excise Taxes or Voluntary Contributions paid pursuant to this Chapter shall be applied as a credit against that Cannabis Business's future Cannabis Excise Taxes owed. Under no circumstances will any Cannabis Business be entitled to a refund of any Cannabis Excise Taxes or Voluntary Contributions paid to the City.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### 3.60.120 Audits.

A. General. The City Manager's Designee shall have the power to audit and examine all books and records of all Cannabis Businesses, including State and federal income tax returns, California sales tax returns, income statements, balance sheets, profit and loss statements, sales logs, or other evidence documenting the gross receipts of the Cannabis Business, and, where necessary, all equipment of any Cannabis Business for the purpose of ascertaining the amount of Cannabis Excise Tax, if any, required to be paid by the provisions of this Chapter, and for the purpose of verifying any statements or any item when filed by any person or entity pursuant to the provisions of this Chapter.

1. In the case of Voluntary Contributors, the City Manager's Designee shall also have the power to audit and examine the Square Footage Reports of the Voluntary Contributors as well as inspect the respective Cultivation Facility for the purpose of ascertaining the amount of Voluntary Contribution, if any, required to be paid by the provisions of this Chapter, and for the purpose of verifying any statements or any item when filed by a Voluntary Contributor pursuant to the provisions of this Chapter.

B. Confidentiality of Taxpayer Records. Any financial information provided to the City Manager's Designee including information relating to gross receipts, cost of operations, or the amount of taxes paid shall be deemed confidential to the fullest extent allowed under the law. Any such confidential information shall only be shared with the City's agents and as required by law.

C. Cost Recovery. If, as the result of an audit, any Cannabis Business is determined to have underpaid its Cannabis Excise Tax or Voluntary Contribution liability by 10 percent or more in any period, that Cannabis Business and its principals shall be jointly and severally liable to the City for all of the City's costs, expenses, and fees associated with that audit, including, but not limited to, investigation costs, inspection costs, audit expenses, internal staff costs, administrative overhead, third-party contractor costs and fees, and attorneys' fees ("Audit Costs"). The City may collect Audit Costs through any legal means, such as special assessments, real property liens, personal property liens, attachments, charging orders, garnishments, Franchise Tax Board Intercepts, and seizures of business property.

D. Penalties & Interest. All underpayments discovered pursuant to an audit are subject to all applicable penalties and interest established in this Chapter.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### 3.60.130 Exemptions.

A. Exemption. The Cannabis Excise Tax shall be applied to all Cannabis Businesses unless expressly prohibited by law.

B. Application. Any Cannabis Business desiring to claim exemption from any payment of the Cannabis Excise Tax required by this Chapter must apply to the City upon forms prescribed by the City Manager's Designee, and must furnish such information and make such declarations as may be required by the City Manager's Designee.

2. Failure to file an Income Statement within 15 days of the conclusion of each calendar month, unless authorized to participate in the Voluntary Contribution alternative described in this Chapter.

3. Failure to cooperate with the City Manager's Designee, as determined by any other City Manager's Designee, during an audit pursuant to this Chapter.

4. Underpaying any Cannabis Excise Tax or Voluntary Contribution liability in any period by 50 percent or more.

I. Cannabis Permit Termination Process.

1. The City Manager's Designee may issue a Cannabis Permit Termination Order on any grounds authorized in this Chapter, in this Code, by law, or in equity.

2. A Cannabis Permit Termination Order may be appealed by the affected Cannabis Permittee to an independent neutral third party administrative hearing officer appointed by the City Manager's Designee ("Hearing Officer"). Said appeal shall be made by a written notice of appeal from the Cannabis Permittee within 15 days of the date of the Cannabis Permit Termination Order. The appeal shall be accompanied by a written verified declaration setting forth the basis for the claim that the Cannabis Permit termination is improper.

3. Upon receipt of the appeal, the City shall schedule an administrative hearing to occur within 90 days. The City shall provide 10 days advance notice of the date, time, and location of the administrative hearing to the appellant. The Hearing Officer's decision shall be final and binding upon the City and the appellant.

4. The costs of the administrative hearing shall be borne by the non-prevailing party.

5. Failure to properly appeal the Cannabis Permit Termination Order as required herein, or to appear at the properly noticed administrative hearing, shall constitute a waiver of the right to contest the Cannabis Permit termination, a failure to exhaust the available administrative remedies, and a bar to any further appeals of the Cannabis Permit termination.

J. Delinquency Notice Not Required. The City Manager's Designee is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter, and failure to send such notice or bill shall not affect the validity of any Cannabis Excise Tax, penalties, or interest due under the provisions of this Chapter.

K. Effect of Prosecution. The conviction and punishment of any person or entity for transacting any business without a Cannabis Permit shall not excuse or exempt such person or entity from the payment of any Cannabis Excise Tax due or unpaid at the time of such conviction, and nothing in this Chapter shall prevent a criminal prosecution for any violation of other provisions of this Code.

L. Cumulative. These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]



[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### **3.60.140 Unlawful Activity.**

The payment of any Cannabis Excise Tax or Voluntary Contribution pursuant to this Chapter shall not be construed as authorizing any unlawful activity. All Commercial Cannabis Activities must comply with all laws, including, but not limited to, local laws such as certificate of occupancy requirements, zoning compliance, and permits from all applicable government entities.

[Ord. No. 559, Section 2, 3/6/17; Ord. No. 569, Section 2, 5/24/17.]

### **3.60.150 Enforcement.**

A. Regulations. The City Manager's Designee shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.

B. Violations.

1. Any party who engages in a violation of this Chapter shall be subject to the penalties and remedies provided by this Chapter.

2. Any violation of this Chapter shall constitute a separate offense for each and every day the violation occurs or persists.

C. Misdemeanor. Except for the financial penalties otherwise specifically proscribed herein, all persons, entities, and businesses in violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punishable by a fine of up to \$ 1,000 and imprisonment of up to six months per offense per day.

D. Tax Debt. The amount of all unpaid Cannabis Excise Taxes, penalties, and interest imposed by this Chapter shall be deemed a debt to the City ("Tax Debt"), and any Cannabis Business, or Cannabis Business principal, that fails to pay the Tax Debt shall be liable to the City for said amounts, and an action may be brought in the name of the City in any court of competent jurisdiction to recover the Tax Debt due and owing to the City. The City may collect the Tax Debt through any legal means, such as special assessments, real property liens, personal property liens, attachments, charging orders, garnishments, Franchise Tax Board Intercepts, and seizures of business property. All principles of any Cannabis Business are jointly and severally liable for all the Tax Debts of the Cannabis Business.

E. Late Penalty. There is hereby imposed a 25 percent Late Penalty on any Cannabis Business that fails to pay any Cannabis Excise Tax owed to the City within 30 days of the Cannabis Excise Tax due date. All Late Penalties are immediately due and payable as of the due date and, therefore, are subject to interest as Tax Debt.

F. Underpayment Penalty. Any Cannabis Business that underpays its Cannabis Excise Tax or Voluntary Contribution liability by 50 percent or more in any period shall pay an Underpayment Penalty equal to 25 percent of the disparity for that period. All Underpayment Penalties are due and payable as of the due date of the underlying Cannabis Excise Tax payment and, therefore, are subject to interest as Tax Debt from that date.

G. Interest. There is hereby imposed a 10 percent interest charge on any Cannabis Business for all past-due Tax Debt. All interest-owed pursuant to this Chapter is immediately due and payable and, therefore, will compound as part of the Tax Debt.

H. Cannabis Permit Termination Grounds. The following shall constitute grounds for terminating a Cannabis Permit:

1. Failure to pay any Cannabis Excise Tax or Voluntary Contribution within 30 days of the due date.